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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,480	01/11/2001	Joseph Wayne Forler	PU 010015	9339
<div>7590 02/20/2009</div> <div>Joseph S. Tripoli Thomson Multimedia Licensing Inc. Patent Operation Two Independence Way P. O. Box 5312 Princeton, NJ 08543-5312</div> <div>EXAMINER HOSSAIN, FARZANA E</div> <div>ART UNIT 2424 PAPER NUMBER</div> <div>MAIL DATE 02/20/2009 DELIVERY MODE PAPER</div>				

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSEPH WAYNE FORLER  
and PATRICK JOHN KENNEDY DEIGHAN

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Appeal 2009-0695  
Application 09/758,480  
Technology Center 2600

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Decided:<sup>1</sup> February 20, 2009

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Before KENNETH W. HAIRSTON, MASHID D. SAADAT,  
and KARL D. EASTHOM, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final rejection of claims 1 to 20.

The disclosed invention is directed to a method and apparatus for displaying real time auxiliary information from a secondary input signal on a video processing television or television signal receiver (Spec. 1). The auxiliary information is displayed *during* display of the video programming, or, in other words, *concurrently while* the current programming or video is being displayed (Spec. 2-4).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method for displaying user selected information comprising the steps of:

providing video information received from a first source for display;

receiving a selected information from a second source; and

providing the selected information for display while the video information is being displayed, wherein display of the selected information is controlled by a user variable frequency of display parameter that determines when the selected information is displayed.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

LaJoie	US 6,049,333	Apr. 11, 2000
Bixler	US 6,507,351 B1	Jan. 14, 2003 (filed Dec. 8, 1999)
Abe	EP 0 766 463 A2	Apr. 2, 1997

The Examiner rejected claims 1 to 16 under 35 U.S.C. § 103(a) as being unpatentable over LaJoie and Bixler.

The Examiner rejected claims 17 to 20 under 35 U.S.C. § 103(a) as being unpatentable over LaJoie and Bixler, further in view of Abe.

The Examiner rejected all claims 1 to 20 using the same base combination of LaJoie and Bixler. The Examiner cited LaJoie for a teaching of displaying selected or auxiliary information *while* video, program, or program information is being displayed (claim 1); *during* the display of a program or video information (claim 9); and *concurrently* while a program is being displayed irrespective of program content (claim 17). The Examiner cited Bixler for a teaching of displaying selected or auxiliary information under the control of a *user variable frequency of display parameter* that (i) determines *when* the auxiliary or selected information is displayed (claims 1 and 9), and (ii) determines the *frequency* of when auxiliary information is displayed (claim 17). According to the Examiner, “it would have been obvious to modify La[J]oie to include the claimed displaying the selected information according to a user selected frequency of display to provide a user with more control by enabling a user to set a schedule as to when the user would like to view the selected information” and to “enable[e] a user to set a schedule and frequency of display according to user preferences” (Ans. 4). And, according to the Examiner, an ordinarily skilled artisan would have been motivated to combine LaJoie with Bixler in order to enhance the efficiency and ability of a computer-user to effectively view, utilize, study, and remember the auxiliary/selected information (Ans. 10).

Appellants argue that Bixler merely provides auxiliary/selected information in a screen saver mode, and presents the auxiliary information at a time different than (and not during, while, or concurrently) the display of the video or program information (App. Br. 5 and 8; Reply Br. 3). Appellants contend that because Bixler “is directed to a screen saver mode of operation” (App. Br. 8) which is used “to prevent burn in of a display device” (Reply Br. 3), “Bixler is substantially different from the invention set forth in rejected claims” (App. Br. 6). Appellants contend, therefore, that Bixler’s screen saver mode operates contrary to the operation of LaJoie, and even if the combination were made, the auxiliary information would not be displayed concurrently or at the same time as the video or program display (Reply Br. 4).

As indicated *supra*, LaJoie teaches displaying selected or auxiliary information *while* video, program, or program information is being displayed (*see* Figs. 3, 5, and 6). Bixler discloses a screen saver mode applicable to displays in computer systems as opposed to television or video systems (*see* Figs. 10, 11, and 14; col. 1, ll. 10-16; col. 3, ll. 1-11). In Bixler’s screen saver mode, the auxiliary information is displayed “*after* the computer has been idle for a predetermined period” (col. 3, ll. 8-9) (emphasis added), and the information is displayed at a time different (*e.g.*, after) than the primary information display.

We agree with Appellants that Bixler’s computer screen saver mode is substantially different from LaJoie’s simultaneous video and auxiliary information display method (*see* App. Br. 6 and 9), and that therefore it would not have been obvious to make the combination (App. Br. 8). The Examiner’s conclusion that it would have been obvious to the skilled artisan to control the display frequency of

auxiliary information using the screen saver mode of Bixler while simultaneously displaying video information with the method of LaJoie is unsupported by the teachings or suggestions of Bixler. Even if the combination were made, Bixler's auxiliary information would not be displayed concurrently with the primary display (*e.g.*, LaJoie's video display) since to do so would frustrate the primary purpose of Bixler of operating the screen saver mode to save the display screen from burn in. Bixler's screen saver mode would destroy the simultaneous nature of LaJoie's video and auxiliary information displays.

In summary, the obviousness rejection of claims 1 to 16 is not sustained because the Examiner's articulated reasons for combining the teachings of Bixler with those of LaJoie do not support a legal conclusion of obviousness. *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). The obviousness rejection of claims 17 to 20 is not sustained because the teachings of Abe do not cure the noted shortcomings in the teachings of LaJoie and Bixler.

The decision of the Examiner is reversed.

REVERSED

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